

THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CIVIL CASE NO. 1:21-cv-00067-MR

DMARCIAN, INC.,

Plaintiff,

v.

DMARCIAN EUROPE BV,
f/k/a dmarcian Europe BV,

Defendant.

ADDENDUM TO
RESPONSE OF THE
REGISTER OF COPYRIGHTS
TO REQUEST PURSUANT TO 17
U.S.C. § 411(b)(2)

On October 16, 2023, the Register of Copyrights (“Register”) responded to the Court’s request for advice in connection with the registration of a copyright in a computer software program titled “dmarcian Source Code” (the “Work”).¹ In light of new information that has come to the Government’s attention, the Register submits this Addendum to clarify that her conclusions in the October 16 Response remain unchanged.

I. The October 16 Response

The Register’s October 16 Response provided advice on three questions regarding alleged inaccuracies in the dates of publication and completion of the Work claimed in registration number TX0008941559 (the “Registration”). In

¹ Resp. of the Reg. of Copyrights to Req. Pursuant to 17 U.S.C. § 411(b)(2) (“October 16 Response”), ECF No. 272.

short, the October 16 Response explained that based on relevant legal standards and examining practices, the U.S. Copyright Office (“Copyright Office” or “Office”) would not have registered the Work if it had been aware of the alleged inaccuracies.² The October 16 Response also addressed the legal standards and examining practices relevant to supplementing a copyright registration.³

II. The Supplementary Registration

On October 11, 2023, the Office received an application for supplementary registration in which dmarcian, Inc. (“Plaintiff”) sought to augment the information contained in the Registration. Specifically, Plaintiff sought to remove the date of first publication and the nation of publication information from the Registration. In the application, Plaintiff explained:

The work originally registered under TX0008941559 was inadvertently and incorrectly identified as published in the original submission. The registrant mistakenly construed the 2012 launch of its software-as-a-service platform as publication of the work. In actuality, the work (i.e., the underlying source code) was never published and remains today unpublished within the meaning of the Copyright Act.

Plaintiff did not disclose that the Registration it sought to augment was the subject of this litigation. Because the registration specialist who received the application was not aware of this ongoing suit,⁴ the specialist had no

² *Id.* at 1–2, 15, 19.

³ *Id.* at 7–15.

⁴ The Office is currently reviewing its procedures to ensure all registration specialists are apprised of registrations that are the subject of § 411(b) requests.

reason to question the applicant's representations and accepted them as true and accurate.⁵ Accordingly, the registration specialist issued a supplementary registration to Plaintiff under TXu002393361 (the "October 16 Supplementary Registration"), effective October 11, 2023.

III. Relevant Examination Practices and Impact on Current Dispute

Generally, the Office accepts the facts stated in a basic or supplementary registration application, unless they are implausible or contradicted by information provided elsewhere in the registration materials.⁶ The Office does not conduct investigations or make findings of fact to confirm the truth of any statement made in an application. It does not make factual determinations, including those related to a work's publication.⁷

The October 16 Supplementary Registration thus does not represent the Office's determination regarding the publication status of the Work. Rather, it functions as a record of the facts stated by Plaintiff. Nothing about the Supplementary Registration indicates a position on the facts of this case, nor does it alter the legal analysis in the Office's prior response to this Court.

⁵ See October 16 Response at 14.

⁶ U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 602.4(C) (3d ed. 2021).

⁷ *Id.*

Dated: November 7, 2023

A handwritten signature in black ink, reading "Shira Perlmutter", written over a horizontal line.

Shira Perlmutter

Register of Copyrights and Director
of the U.S. Copyright Office

(202) 707-8350

sperlmutter@copyright.gov